

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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|--|---|---------------------------|
| Robert McAbee, #271620, |) | |
| aka Robert Joseph McAbee, |) | C/A No. 6:06-2749-MBS-WMC |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | O R D E R |
| Warden George Hagan, Associate |) | |
| Warden John R. Pate, Lt. Tereasa Ramsey, |) | |
| Lt. Washington, I.C.C. Kathy Hudson, |) | |
| Dr. T. Bryne, all in their individual |) | |
| capacities, |) | |
| |) | |
| Defendants. |) | |
| |) | |

Plaintiff Robert McAbee is an inmate in custody of the South Carolina Department of Corrections who currently is confined at Allendale Correctional Institution in Fairfax, South Carolina. Plaintiff, appearing pro se, brings this action pursuant to 42 U.S.C. § 1983, alleging his constitutional rights were violated with respect to a prison disciplinary proceeding. He further alleges violations of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (ADA).

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge William M. Catoe for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the provisions of 28 U.S.C. §§ 1915 and 1915A and the Prison Litigation Reform Act of 1996. On October 31, 2006, the Magistrate Judge filed a Report and Recommendation in which he recommended that the allegations of the complaint relating to the prison disciplinary proceeding be summarily dismissed to allow Plaintiff to exhaust his administrative remedies, as required by 42 U.S.C. § 1997e(a). The Magistrate Judge recommended

that Plaintiff's public accommodations claim be allowed to proceed on the merits. Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has thoroughly reviewed the record. The court concurs in the Report and Recommendation and incorporates it herein by reference. Plaintiff's allegations regarding his prison disciplinary proceeding are dismissed *without prejudice* and without issuance and service of process to allow Plaintiff to exhaust his administrative remedies. Plaintiff's claims under the ADA are recommitted to the Magistrate Judge for pretrial handling.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

December 12, 2006

Columbia, South Carolina